

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

UNITED STATES OF AMERICA,)	CASE NO: 7:16-CR-01164-1
)	
Plaintiff,)	CRIMINAL
)	
vs.)	McAllen, Texas
)	
DANIEL PEREZ,)	Thursday, February 2, 2017
)	(2:55 p.m. to 3:32 p.m.)
Defendant.)	(3:41 p.m. to 3:47 p.m.)

SENTENCING

BEFORE THE HONORABLE RICARDO H. HINOJOSA,
CHIEF UNITED STATES DISTRICT JUDGE

(SEALED BENCH CONFERENCE OMITTED)

Appearances:	See Next Page
Court Recorder:	Antonio Tijerina
Transcribed by:	Exceptional Reporting Services, Inc. P.O. Box 18668 Corpus Christi, TX 78480-8668 361 949-2988

Proceedings recorded by electronic sound recording;
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1 McAllen, Texas; Thursday, February 2, 2017; 2:55 p.m.

2 (Call to Order)

3 **THE COURT:** Please be seated.

4 Criminal Number M-16-1164-01, *United States of*
5 *America versus Daniel Perez.*

6 **MR. SALAZAR:** Good afternoon, your Honor. Jesse
7 Salazar for the Government. Appearing also for the Government
8 is Chris Cestaro, your Honor.

9 **MR. RINCONES:** Good afternoon, your Honor. Leonardo
10 Rincones for Mr. Perez, present and ready to proceed.

11 **THE COURT:** Well, you all need to come up here.

12 **MR. RINCONES:** Yes, your Honor.

13 **THE COURT:** I guess my first question to the
14 Government is, there are two related cases where those
15 individuals pled to a charge that was a maximum of 10 years.
16 These defendants, the one today -- the two that are to be
17 sentenced today, pled to a charge of a maximum of five years.
18 However, when you look at the presentence reports of the ones
19 that pled to the 10 years and the ones that pled to the five
20 years, the 10-year statute guideline is much lower than the one
21 for the five-year maximum. And, so, how -- how did you all
22 make that decision as to what people should plead to? Plus,
23 it's my understanding that the ones that pled to the 10 years
24 are the ones that actually made money off of the transaction
25 and kept the money. I wouldn't say that there's no benefit to

1 the two defendants that get sentenced today, because there is.
2 Obviously, they made the profit from their business. And the
3 problem with the Foreign Corrupt Services (sic) Act, the
4 problem that it's trying to face is the unfair competition that
5 you get the business because you're giving somebody a kickback
6 even though you're still getting the price that you would have
7 made. So, there is a -- a profit that is made by the two
8 defendants today, because they're owners of the company. So,
9 it isn't like they don't make a profit and that the only ones
10 that were making money off of this were the people that were
11 paying -- getting the bribe paid to them. But what is odd is
12 this very different guideline determination based on a crime
13 that has a lesser statutory maximum than the one with the 10
14 years.

15 **MR. CESTARO:** And if I may address that, your Honor.

16 **THE COURT:** Sure.

17 **MR. CESTARO:** The individuals that were charged with
18 the 10-year maximum statute were both the foreign officials,
19 and they were both charged with money laundering.

20 **THE COURT:** Right.

21 **MR. CESTARO:** The -- one of the reasons for that is
22 under precedent in the Fifth Circuit, *United States versus*
23 *Castle*, the Fifth Circuit found that the foreign officials
24 themselves could not be --

25 **THE COURT:** No. This is direct -- the Foreign

1 Corrupt Practices Act is directed at Americans --

2 **MR. CESTARO:** Yes.

3 **THE COURT:** -- bribing somebody else --

4 **MR. CESTARO:** And --

5 **THE COURT:** -- to get their business.

6 **MR. CESTARO:** And, so, the foreign officials could
7 not be charged with the underlying Foreign Corrupt Practices
8 Act violation. Here -- and, so, they were charged with money
9 laundering.

10 **THE COURT:** Because the whole purpose of the Foreign
11 Corrupt Practices Act is to prevent Americans from paying
12 bribes to some foreign companies to do business with them.

13 **MR. CESTARO:** Americans, as well as individuals that
14 take actions in America, as well as individuals associated with
15 American entities. Yes. Exactly correct, your Honor. And --

16 **THE COURT:** But you have to be an American?

17 **MR. CESTARO:** You do not have to be an American.

18 **THE COURT:** Well, why would the other two not have
19 been doing business here when they would come and do business
20 with -- on this side of the border to go ahead and -- I mean,
21 they had to come at some point to do business with Hunt Pan Am,
22 right?

23 **MR. CESTARO:** The foreign officials did come here and
24 did meet with the individuals.

25 **THE COURT:** Okay. Why would they be exempt from

1 coming under the Act if it's for people who do business in the
2 United States, not just --

3 **MR. CESTARO:** They are exempt because they are the
4 Government officials in the -- the foreign entity -- in the
5 foreign country, in this case Mexico, and under the precedent
6 in the Fifth Circuit, which is *United States versus Castle*, the
7 Fifth Circuit held that those foreign officials could not be
8 co-conspirators to the underlying Foreign Corrupt Practices Act
9 crime. And, so, they were charged with a different offense.
10 They were charged with money laundering.

11 **THE COURT:** Right. I understand that. Which,
12 therefore, has a statutory maximum of 10 years.

13 **MR. CESTARO:** Yes, your Honor.

14 **THE COURT:** However, there is something wrong with a
15 guideline system that ends up with a much higher guideline
16 range for somebody who's convicted of a five-year maximum as
17 opposed to a 10-year maximum.

18 **MR. CESTARO:** And the applicable guideline range in
19 this case was under 2C1.1, which has a different base offense
20 than the money laundering, and that --

21 **THE COURT:** I know that, but --

22 **MR. CESTARO:** -- caused the (indiscernible).

23 **THE COURT:** I'm not criticizing you.

24 **MR. CESTARO:** Yes.

25 **THE COURT:** But I'm -- I think I have a right to say

1 something about the commission, having served on it for 12
2 years.

3 **MR. CESTARO:** Yes, your Honor.

4 **THE COURT:** But this is probably something that
5 should be brought to their attention, that you have a crime
6 that has a maximum punishment of five years, automatically
7 getting to way past the five years, with these amounts of
8 money, than you do with, in this case, basically, people who
9 are co-defendants of theirs, because they're partners in crime
10 with them. And they get charged with something and the maximum
11 is 10 years, and somehow that guideline, money laundering
12 guideline, is lower than the -- the Foreign Corrupt Practices
13 Act guideline. The reason I say that's an issue is because the
14 commission normally tries to do something with regards to what
15 the statutory maximums are and the statutory minimums; because
16 you just can't go out and dole out penalties -- ranges without
17 obvious serious deference to what congress has decided is the
18 maximum and the mandatory minimum in cases with mandatory
19 minimums. And, so, that's the question here. And did you all
20 think about that when you all decided what charges people were
21 going to get -- pleading to with regards to those two versus
22 these two?

23 **MR. CESTARO:** We -- under the USAM, you know, charged
24 each individual with -- with what we thought was appropriate in
25 that specific matter.

1 **THE COURT:** Okay. But you also think that they
2 didn't make any money. The business made money, right? I
3 mean, the reason we have this is so that -- to protect all
4 businesses. There might be somebody else that does the same
5 thing that Hunt Pan Am does, which is sell motors, or whatever
6 they do with regards to equipment for the aircraft. By
7 agreeing to pay the, quote, "fee" that you pay, the referral
8 fee, or whatever you want to call it, you're basically making
9 sure that you get the business. So, you are making business;
10 you are making money. So, let's not play with this, "These
11 people weren't making any money." They -- the bribe money was
12 kept by the referral people, and, yes, the -- the state, the
13 Mexican state, ended up losing money, because they ended up
14 paying a lot more than something would have been worth, but
15 there is a reason why somebody pays a referral fee, because
16 you're making the profit. You're getting to sell your product.
17 And, yes, these people -- these two defendants did not keep any
18 of the bribe money, but they paid the bribe money so that their
19 business could keep on going and doing good business and
20 selling whatever equipment. Otherwise, they wouldn't have paid
21 them.

22 **MR. CESTARO:** Absolutely agree, your Honor.

23 **THE COURT:** The only reason they participated in this
24 transaction, knowing full well that the poor people of the
25 state of Tamaulipas were going to be making the payment, was

1 because they wanted the business.

2 **MR. CESTARO:** Absolutely agree, your Honor.

3 **THE COURT:** And, so, there is a -- there is some
4 benefit derived by these two defendants with regards to this.
5 They didn't keep the bribe money, but they certainly got the
6 profits or -- they were both co-owners of the business or part
7 owners of the business, and so the business was doing well;
8 other than that, they wouldn't be paying all -- they wouldn't
9 go through the charade of giving them fake invoices so that --
10 and then going through the charade of also -- not charade, but
11 actually then taking that money and putting it in the bank
12 accounts of those Mexican officials. So, you know, you do make
13 money here.

14 Mr. Perez, have you had an opportunity to review the
15 presentence investigation report that was prepared in your
16 case, sir?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** Have you discussed it with your lawyer?

19 **THE DEFENDANT:** Uh, we went through it, sir, but --

20 **THE COURT:** If you haven't had enough time, you need
21 to tell me.

22 **THE DEFENDANT:** No, sir.

23 **THE COURT:** I can give you enough time.

24 **THE DEFENDANT:** I had enough time, sir.

25 **THE COURT:** Are you sure?

1 **THE DEFENDANT:** Yes, your Honor.

2 **THE COURT:** Well, then, why is it that you say,
3 "Well, we kind of went through it," but then you were going to
4 say something else?

5 **THE DEFENDANT:** Pardon?

6 **THE COURT:** Well, I asked you if you had -- if you
7 have visited with your lawyer about this, and you started off
8 by saying, "Well" -- well, does that mean you didn't really
9 visit with him about this or what?

10 **THE DEFENDANT:** No, sir. In detail I did visit with
11 him.

12 **THE COURT:** Okay. Is there anything you would like
13 to tell the Court about this report or anything else before I
14 make a decision as to what sentence to impose in your case?

15 **THE DEFENDANT:** Uh, first, your Honor, I'd like to
16 apologize, because this -- to you, the Court, and, of course,
17 God; that there was a bad business -- bad business decision
18 that was made. Okay? And if I was given a second opportunity,
19 I would -- I would -- definitely would not make the same
20 choice. I wouldn't even consider it, because being ignorant to
21 the laws -- because I was just -- I was just the director of
22 maintenance, and, you know, I -- I would have never ever,
23 ever --

24 **THE COURT:** Well, you were the director of
25 maintenance, but also a part owner of the business, right?

1 **THE DEFENDANT:** Shareholders, your Honor.

2 **THE COURT:** Right. A shareholder, part owner of the
3 business.

4 **THE DEFENDANT:** Both -- both of us shareholders.

5 **THE COURT:** What?

6 **THE DEFENDANT:** Both.

7 **THE COURT:** Both of you, but you were a part owner of
8 the business.

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** And you had worked there a long time.

11 **THE DEFENDANT:** Yes, sir.

12 **THE COURT:** And you were director of maintenance.

13 **THE DEFENDANT:** Yes, sir.

14 **THE COURT:** But as director of maintenance, you also
15 were the one that had personal contact with these two
16 individuals that were getting their kickbacks.

17 **THE DEFENDANT:** Yes, your Honor, I was, for the
18 reason is that I was the only one -- well, not the only one,
19 but the one that spoke Spanish with them.

20 **THE COURT:** I know, but, frankly, the other owners
21 had to have known this was going on.

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** I mean, they're not stupid businessmen.
24 I mean, they're businessmen.

25 **THE DEFENDANT:** Uh-huh.

1 **THE COURT:** And everybody knew that, "Well, we're --
2 we're going to inflate the prices because of the fact that we
3 have to pay them something." I mean, none of you all were
4 inexperienced businessmen.

5 **THE DEFENDANT:** No, sir.

6 **THE COURT:** And you know you're doing business with
7 people from Mexico, and so you know that -- the practices of
8 some of the business situations in Mexico, and so it isn't like
9 people didn't know this was going to go on. Right?

10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** I mean, it wasn't just you; of course the
12 rest of them knew.

13 **THE DEFENDANT:** Yes, sir.

14 **THE COURT:** Okay. So, what else would you like to
15 say?

16 **THE DEFENDANT:** Well, like I was saying, you know --

17 **THE COURT:** I mean that what they did to you is,
18 "Well, you go ahead and try to do the best deal and see what --
19 how much they want, and let's proceed in that fashion."
20 Because you're the one that dealt with them.

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** Right?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** But everybody else knew that that was
25 part of what they expected you to do.

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** You didn't dream this up yourself. I
3 mean --

4 **THE DEFENDANT:** No, sir.

5 **THE COURT:** -- everybody knew that that's how you did
6 business with these people from Mexico.

7 **THE DEFENDANT:** Yes, sir.

8 **THE COURT:** What nobody ever stops to think about is
9 that there will be corruption as long as people who are not
10 corrupt agree to pay these fees. Your answer would be, "Well,
11 some other company would have done it anyway." And, so, at
12 some point I guess the American government has decided, "Well,
13 we'll try to stop this by having the Foreign Corrupt Practices
14 Act, by trying to stop everybody from doing this." Because the
15 answer would normally be, "I'm not doing anything else that
16 anybody else doesn't do. And, so, I'm just playing by their
17 rules, whatever their rules are in Mexico as to how they do
18 business," and never mind that the citizens of Tamaulipas don't
19 get the kind of assistance that people get on this side of the
20 border or any of those other things, and that their government
21 is unable to provide certain things because people, in this
22 case, these individuals, were too busy taking it for
23 themselves. It isn't like they were going to go use it to do
24 charitable work in the state of Tamaulipas.

25 **THE DEFENDANT:** Yes, sir.

1 **THE COURT:** But I don't think that you're the only
2 person in the company that knew that this was going on -- done,
3 that this was being done, simply because you were in charge of
4 the maintenance part.

5 **THE DEFENDANT:** Correct.

6 **THE COURT:** Okay. So, what else do you want to say?

7 **THE DEFENDANT:** Well, like I said, I have to
8 apologize to you and the Court and to God, sir. I know that
9 I've done this bad business decision --

10 **THE COURT:** Well, I can take a lot of credit, but I
11 can't make decisions for God.

12 **THE DEFENDANT:** No, no. I said I'm giving credit to
13 God.

14 **THE COURT:** Yeah, I know. I know, so --

15 **THE DEFENDANT:** Okay.

16 **THE COURT:** -- that's between you and God.

17 **THE DEFENDANT:** Okay.

18 **THE COURT:** I don't want to sort of --

19 **THE DEFENDANT:** I've been an embarrass -- I
20 embarrassed my family, which are in the back of the courtroom,
21 sir, for --

22 **THE COURT:** You're right.

23 **THE DEFENDANT:** -- for -- for my decision.

24 **THE COURT:** And I have letters from your family, just
25 like I have letters from the other defendant today.

1 **THE DEFENDANT:** Yes. So, I --

2 **THE COURT:** I have to tell you another thing. Not
3 that I'm in any way holding these against you; in fact, your
4 family is accomplished, just like the other defendant's family
5 is accomplished, but sometimes judges are put in a hard
6 situation. Sometimes when somebody has a very good family and
7 everything else, you think, well, there was no reason for you
8 to be doing this. Sometimes people with very difficult family
9 circumstances and inability to take care of certain things
10 financially or otherwise, it's no excuse, but -- so, you get
11 pulled in different directions as a judge as to how you take
12 these letters from family members. I do read them. I have to
13 tell you that. Both of you have very good families, and I
14 think both of you probably have families that are a little
15 surprised that I have to be the one making a decision as to
16 what happens here. They're used to you all making a lot of
17 good family decisions and probably wondering, "Well, how did
18 this happen," and your answer would be to them, I would be -- I
19 suspect, "Well, that's the way everybody does it; that's what
20 people do when they do business with people from Mexico."

21 **THE DEFENDANT:** You're right, your Honor, and -- and
22 like I said, it was a really, really bad business decision on
23 my part, and I take responsibility for my actions.

24 **THE COURT:** I guess you all have competitors in your
25 business with Hunt Pan Am.

1 **THE DEFENDANT:** Yes, sir. We have -- in Brownsville
2 we've got two, and, of course, we've got McAllen, Corpus; all
3 over the place.

4 **THE COURT:** Right. I mean, so, these people could
5 have gone to anybody.

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** And the concern by you was, "Well, if we
8 don't do it, somebody else is going to do it."

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** Or did you sort of negotiate with them
11 what the price was going to be for the fees?

12 **THE DEFENDANT:** No, sir.

13 **THE COURT:** So, who decided the fee amounts?

14 **THE DEFENDANT:** They would -- they would come in,
15 okay; I would give them a quote, a correct quote, except --

16 **THE COURT:** The one that you would normally give me
17 if I came in and said, "I want a motor for the airplane I
18 have."

19 **THE DEFENDANT:** I would --

20 **THE COURT:** Which I don't have, but --

21 **THE DEFENDANT:** I would give you a quote, sir, and --
22 because it's no secret to anybody. There's a book that's put
23 out okay? It's like a classified ad book, and anybody can read
24 them there, 8 percent, 10 percent above cost, but -- they would
25 say, "This is how much I want."

1 **THE COURT:** "This is how much I want it to cost," is
2 what they would tell you.

3 **THE DEFENDANT:** Yes, sir.

4 **THE COURT:** And then you would agree, knowing full
5 well that what that meant is that you were going to get your
6 price, and something was going to happen to the in between
7 amount.

8 **THE DEFENDANT:** Well --

9 **THE COURT:** Between your price and whatever they were
10 saying the price should be.

11 **THE DEFENDANT:** Yes, sir.

12 **THE COURT:** And do they just come out and tell you
13 that? Or, obviously, there's a conversation of, "This is what
14 I want it to be, because I want to make my fee out of it."

15 **THE DEFENDANT:** Well, your Honor, we -- we never
16 solicited their business, us calling them, or anything. They
17 would call or come to us and say, "I want a quote of this," and
18 I presume -- I know for a fact, not presume, they would go to
19 different places and get quotes.

20 **THE COURT:** Right.

21 **THE DEFENDANT:** And from there --

22 **THE COURT:** But did you ever --

23 **THE DEFENDANT:** And from there --

24 **THE COURT:** Did you ever have one of them say to your
25 real price, "Can we negotiate that price and make it lower?"

1 **THE DEFENDANT:** Yes, sir. Many times, sir, up to
2 this date.

3 **THE COURT:** Okay. And sometimes you would make it
4 lower, right?

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** Like, if I went in there, like if I go in
7 and buy a car, I'm going to try to negotiate a price lower than
8 what was originally quoted to me.

9 **THE DEFENDANT:** Correct.

10 **THE COURT:** Okay. And they would do that with you
11 here.

12 **THE DEFENDANT:** Yes, sir.

13 **THE COURT:** And in those cases, if you lowered the
14 price, then how would you decide -- how would they decide how
15 much came to them?

16 **THE DEFENDANT:** That -- for their part, I wouldn't
17 know. They would just come up with a figure and say, you know,
18 "This is how much we expect."

19 **THE COURT:** Okay. But -- but that -- you would still
20 be stuck at what their first price was; it just meant that they
21 were going to keep more, because they were still going to ask
22 the state to pay whatever price they said they wanted in the
23 first place.

24 **THE DEFENDANT:** I presume, sir.

25 **THE COURT:** And, so, you still negotiated with them

1 for a lower price knowing full well that they might keep more.

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** And all you -- you and your company ever
4 got out of it was that you made the sale.

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** And it was never that you upped the price
7 of what you would normally sell it to somebody; you just upped
8 the price if they wanted a higher amount listed as the price.

9 **THE DEFENDANT:** Correct.

10 **THE COURT:** So, what else do you want to say about
11 this report or anything else before I make a decision in your
12 case?

13 **THE DEFENDANT:** Well, sir, that -- that -- that's it,
14 and all I ask is for -- I pray for consideration, leniency from
15 you on -- on my faith.

16 **THE COURT:** Mr. Rincones, you, obviously, have
17 reviewed this report with your client?

18 **MR. RINCONES:** I have, your Honor.

19 **THE COURT:** Which, if any, objections do you still
20 need a ruling from the Court on, and what would you like to say
21 on his behalf here?

22 **MR. RINCONES:** Your Honor, the only objection that we
23 need a ruling on is an objection number three that I filed in
24 writing.

25 **THE COURT:** I mean, obviously, the Court is aware of

1 the Title 18, Section 3553(a) factors, which it needs to
2 consider in order to make a determination as to what the
3 appropriate sentence should be in this case. Two of those
4 seven factors, (a)(4) and (a)(5), require consideration of the
5 guidelines, as well as the policy statements within the
6 guidelines. I will, therefore, go ahead and determine and
7 calculate the policy -- the guidelines, as well as the -- and
8 then consider the policy statements, including grounds for
9 departure, and then after having done that, then I will
10 consider all of the applicable 3553(a) factors taken as a whole
11 in order to make the determination as to what the appropriate
12 sentence should be in this case.

13 Which, if any, objections do you still need a ruling
14 from the Court on, and what would you like to say on his behalf
15 here?

16 **MR. RINCONES:** Your Honor, the only objection that I
17 need a ruling on is objection number three that was filed in
18 writing. It is with regards to a four-level increase based on
19 the application of U.S. Sentencing Guidelines Section
20 2C1.1(b)(3). It's paragraph number 46 of the original PSR. In
21 that paragraph, your Honor, my client is assessed a four-level
22 increase based on the application of this section. This
23 section specifically states that a four-level --

24 **THE COURT:** Well, we know that they're not elected
25 public officials.

1 **MR. RINCONES:** Correct, your Honor.

2 **THE COURT:** And do we really consider them high-level
3 decision-making or sensitive positions?

4 **MR. RINCONES:** We --

5 **THE COURT:** I don't think so.

6 **MR. RINCONES:** It is our position that they are not,
7 your Honor, like --

8 **THE COURT:** Does the Government have a different view
9 about these two individuals? I mean, are they really high-
10 level decision makers? Well, they're not. And are they -- a
11 sensitive position?

12 **MR. CESTARO:** Your Honor, obviously, this is a very
13 fact-specific inquiry and case by case. Here --

14 **THE COURT:** Obviously, like every case, it is.

15 **MR. CESTARO:** Yes. And -- and here, as -- as the
16 Court noted, they are not elected officials. And -- and they
17 didn't have final --

18 **THE COURT:** Well, was the -- as the -- do you know
19 the commission actually gives us application notes? And it
20 says:

21 "'High-level decision-making or sensitive position'
22 means a position characterized by a direct authority
23 to make decisions for, or on behalf of, a government
24 department, agency, or other government entity, or by
25 a substantial influence over the decision-making

1 process. Examples of a public official in a high-
2 level decision-making position include a prosecuting
3 attorney, a judge, an agency administrator, and any
4 other public official with a similar level of
5 authority. Examples of public officials who holds a
6 sensitive position include a juror, a law enforcement
7 officer, an election official, and any other
8 similarly situated individual."

9 It doesn't appear to me that the two individuals here
10 that were involved in taking the bribes are one that one would
11 consider in this public -- elected or any public official in a
12 high-level decision-making or sensitive position. So, the
13 Court's going to go ahead and grant that objection.

14 **MR. RINCONES:** Thank you, your Honor.

15 **THE COURT:** So, what else do you want to say?

16 **MR. RINCONES:** Your Honor, I did file a sealed motion
17 for a variance. It is -- the motion is based on 3553, Sections
18 5H1.1 and 5H1.4, of the sentencing guidelines. May I proceed
19 on that?

20 **THE COURT:** Sure. And why are you skipping to
21 variance? There is nothing in the guideline manual that you
22 think helps you out here?

23 **MR. RINCONES:** In the guideline manual?

24 **THE COURT:** Yes. So, what --

25 **MR. RINCONES:** Well --

1 **THE COURT:** Your -- your things for a variance are
2 going to be what?

3 **MR. RINCONES:** Five H1.1 -- well, thirty-five -- all
4 the factors of 3553 --

5 **THE COURT:** But that's not a variance.

6 **MR. RINCONES:** Yes.

7 **THE COURT:** If you're going to a 5H1.1, that's not a
8 variance.

9 **MR. RINCONES:** Correct. Under the guidelines, your
10 Honor, I would address Sections 5H1.1 and 5H1.4. Five H1.1 has
11 to do with age. We would submit to the Court that my client is
12 69 years of age. He is working on 70 years of age. He was
13 born in Brownsville, Texas, and has been a lifetime resident of
14 Brownsville, Texas. He --

15 **THE COURT:** Is there a policy statement about
16 Brownsville here?

17 **MR. RINCONES:** No, your Honor. I'm just making the
18 Court aware of that. He graduated from the public schools of
19 Brownsville and attended community college for some time there,
20 a short period. Right after that he enlisted in the U.S. Air
21 Force, back in January 19th of 1966. It is there where he
22 started his career as an aircraft mechanic, and while -- while
23 in the air force he obtained the rank of staff sergeant and
24 received a Presidential Citation Award. He was honorably
25 discharged back on November 28th of 1969. We have submitted

1 some exhibits to the Court. We --

2 **THE COURT:** I saw them all.

3 **MR. RINCONES:** We ask the Court to take that into
4 consideration.

5 **THE COURT:** I did -- I do read everything that I get.

6 **MR. RINCONES:** Mr. Perez, your Honor, married
7 Ms. Maria Belia (phonetic) Solis back in May 23rd of 1972.
8 That marriage remains intact to this date, and from that union
9 came four children. I believe the Court has seen the letters
10 from Ms. --

11 **THE COURT:** I saw this, and I've seen their
12 accomplishments.

13 **MR. RINCONES:** -- Ms. Perez and -- and his children.
14 We ask the Court to take that into consideration. It's
15 important to note that Ms. Perez is -- has -- has some pretty
16 severe spinal problems.

17 **THE COURT:** I saw that.

18 **MR. RINCONES:** To this date she has undergone a total
19 of four spinal surgeries. We submitted a letter from her
20 doctor.

21 **THE COURT:** I saw that.

22 **MR. RINCONES:** We ask that the Court take
23 consideration of that. Ms. Perez relies heavily on Mr. Perez
24 on day-to-day living operations, such as, you know -- you know,
25 caring for her, making sure she's taking the right medication,

1 taking her to the correct doctor, to doctor's appointments,
2 et cetera.

3 It's important to note that Mr. Perez also has
4 medical problems. At 69 years of age he's not exactly in the
5 best of conditions. A letter from Dr. Lenz describes his --

6 **THE COURT:** I think Dr. Lenz wrote for both
7 defendants here.

8 **MR. RINCONES:** Well, I'm not sure about that, your
9 Honor. I haven't seen the other.

10 **THE COURT:** Okay. Go ahead.

11 **MR. RINCONES:** But in this case Dr. Lenz states that
12 Mr. Perez has a mixed medical picture and describes that as --
13 him as having high cholesterol --

14 **THE COURT:** That's not unusual.

15 **MR. RINCONES:** -- heart disease, kidney disease,
16 hypertension, history of --

17 **THE COURT:** I saw that, and actually your client had
18 a heart issue the day he pled guilty.

19 **MR. RINCONES:** Yes, your Honor. And --

20 **THE COURT:** And, in fact, he was diagnosed with a
21 mild heart attack the day he pled guilty.

22 **MR. RINCONES:** That is correct, your Honor. And
23 that -- and that is information that I received from Dr. Jaime
24 Silva.

25 **THE COURT:** And, Mr. Perez, that wasn't my fault, was

1 it?

2 (Laughter)

3 THE DEFENDANT: No, sir. No, sir.

4 THE COURT: Okay.

5 MR. RINCONES: Dr. Silva, who is his cardiologist,
6 describes his problems as those being of coronary artery
7 disease, as having a previous coronary stent, and non-ST
8 myocardial infraction (sic) --

9 THE COURT: I -- I saw that.

10 MR. RINCONES: In addition, he's got anxiety,
11 diabetes, hypertension. As the Court noted, on the date that
12 he appeared before your Honor -- and not to the Court's fault;
13 he understands that this is all entirely on him -- he started
14 feeling bad on the drive back home. As a result of that he
15 ended up in the hospital that night. He ended up being
16 admitted and underwent a procedure to unclog his artery.

17 Mr. Perez has received character references, letters
18 from his bosses. That would be Robert Harper, who is the
19 president --

20 THE COURT: I saw Mr. Harper. I think he wrote for
21 both of them.

22 MR. RINCONES: -- and the vice president, Mr. Robert
23 Steenbock.

24 THE COURT: Right. I mean, but what do you expect
25 from them? I mean, this is their company. They were doing

1 well. They were doing -- making business out of it. I mean,
2 it's nice, but, then, these two men really had a lot to do with
3 running the company.

4 **MR. RINCONES:** I understand, your Honor.

5 **THE COURT:** And, you know, any success of the company
6 is really -- they were the ones actually running the company,
7 although I guess there were, like, 12 owners? Isn't that how
8 many there are?

9 **THE DEFENDANT:** Sir, at that time Mr. Harper --

10 **THE COURT:** Right now it's 12, isn't it?

11 **THE DEFENDANT:** No, sir. Just Mr. Harper and
12 Steenbock.

13 **THE COURT:** But now there's more.

14 **THE DEFENDANT:** No. No.

15 **MR. RINCONES:** Now there's two.

16 **THE DEFENDANT:** There are two -- two owners.

17 **THE COURT:** There's not -- there weren't 12
18 shareholders at one time?

19 **THE DEFENDANT:** At that time, where -- for this, this
20 incident happened, yes, sir. But they --

21 **THE COURT:** Yes. There were 12 shareholders.

22 **THE DEFENDANT:** But they bought -- yeah, but they
23 bought the company, and there are only two owners.

24 **THE COURT:** Right; but they were shareholders with
25 you all at the time.

1 **THE DEFENDANT:** No, sir.

2 **THE COURT:** They were not.

3 **THE DEFENDANT:** No, sir.

4 **THE COURT:** So, they just bought the company as is.

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** And, so, everybody that was a
7 shareholder, then, is no longer a shareholder.

8 **THE DEFENDANT:** No, sir.

9 **MR. RINCONES:** Correct.

10 **THE COURT:** But you continued working there.

11 **THE DEFENDANT:** Yes, sir.

12 **MR. RINCONES:** Your Honor, and, as the Court points
13 out, you know, you must take their letters with caution, but
14 it's important to point out the specific things that they
15 state, you know, that have nothing to do with work, you know,
16 such as speak about his professionalism --

17 **THE COURT:** Right. But --

18 **MR. RINCONES:** -- his honesty, his integrity --

19 **THE COURT:** But can I say something here?

20 **MR. RINCONES:** Yes, your Honor.

21 **THE COURT:** When you sit here day in and day out, the
22 ones that are more surprising that they committed crimes are
23 the people who have this steady, family, good situation,
24 education, good jobs, all those things. Those are factors that
25 normally mean somebody doesn't violate the law. Any study that

1 you read into what are the characteristics of somebody who
2 violates the law, as to what segments of the population are
3 more likely to have violated the law, would include lack of a
4 job, dropout rates, drug usage, unstable family situation; you
5 can just go down the list. The two defendants today, on the
6 other hand, have all the -- all the qualities of people that
7 have a low crime commission rate, because they're less likely
8 to feel -- to have the lack of guidance and the lack of
9 financial situation and the lack of education and all these
10 things that come with the lower crime rates.

11 **MR. RINCONES:** I agree with the Court, your Honor.

12 **THE COURT:** And most of the time, when it does happen
13 for those factors present in these two defendants, it's
14 sometimes -- it's usually greed; or the desire to have the
15 business do well. And, you know, the thinking is, "What
16 difference does it make? It's Mexico; that's the way they do
17 business," is the thought of so many people. "I'm not doing
18 anything wrong, and some other company might do the same
19 thing," is what the thinking is.

20 **MR. RINCONES:** And in discussing this case over --
21 I've been representing Mr. Perez for over a year, your Honor,
22 maybe a year and a half. I think in this situation it -- I
23 wouldn't call it greed on his behalf. I think that --

24 **THE COURT:** Well, it's wanting the company to do
25 well.

1 **MR. RINCONES:** He was wanting to keep a job.

2 **THE COURT:** He wanted to make the sale.

3 **MR. RINCONES:** Yes. He wanted to have a job.

4 **THE COURT:** Well, he had a job, and he wanted to make
5 sure that he did well at his job, and --

6 **MR. RINCONES:** Right.

7 **THE COURT:** -- the fact that they would be making the
8 business and that it -- it was them and not some other company.

9 **MR. RINCONES:** Yes, your Honor. He -- he wanted to
10 maintain a job. And, you know, it's important that -- that
11 when the Court reads that he was one of 11 stockholders or one
12 of 12 stockholders, that Mr. Perez was a very minor
13 stockholder.

14 **THE COURT:** I know that. I'm not left --

15 **MR. RINCONES:** He --

16 **THE COURT:** -- with the impression that he was a
17 majority stockholder.

18 **MR. RINCONES:** I think it's important for the Court
19 to -- to understand that Mr. Perez, as a side gig, as his
20 children were growing up, was a musician. The weekends he
21 would play with local bands. I think he tells me he got to
22 play with Grupo Mazz at some point, which is --

23 **THE DEFENDANT:** Well, that was the start of the group
24 I played with.

25 **MR. RINCONES:** Was the one -- started with the group.

1 So, he's very fond of that.

2 **THE COURT:** Well --

3 **MR. RINCONES:** What he did is he --

4 **THE COURT:** -- this -- the starting of the group --
5 when you're a starter for a big group, that means you're a
6 pretty good group.

7 **MR. RINCONES:** (**Laughter**) And what he did, your
8 Honor, in order to buy his one share, was he sold -- he sold
9 his musical equipment. And he tells me, "You know what? I
10 should have stayed a musician. I wouldn't have been involved
11 in this mess." Unfortunately, you know, should have, could
12 have, would have is -- is part of the past, you know? He does
13 recognize the problem he's in.

14 It's important to know also that --

15 **THE COURT:** Well --

16 **MR. RINCONES:** -- as a civilian --

17 **THE COURT:** -- it isn't that he sold the -- his
18 instrument; it's that he fell for what so many people fall for,
19 which is, "There's nothing wrong with this; everybody's doing
20 it, and that's the way they do business in Mexico, and I'm not
21 doing anything wrong." I mean, that -- that's the thinking. I
22 mean, "Well, of course, I'm going to pay them."

23 **MR. RINCONES:** Right.

24 **THE COURT:** That, you know, that's what -- that's
25 part of the way they do business. And, you know, they're doing

1 it, cognizant of it, and if not they're going to go to somebody
2 else. However, when we take that attitude, we just mean it
3 just continues to do the -- the way to do business. And, you
4 know, the amazing thing is sometimes people who are asking you
5 for something, when you say, "No, I don't do business; I'm
6 going to give you the best price, and you go back and you
7 handle it any way you want to, but this is the price, and
8 that's it," and sometimes you get respected a lot more by
9 people than when you say, "Okay, just tell me how much you want
10 me to add here." Because at some point those people have to
11 justify to somebody a cheaper price of something.

12 **MR. RINCONES:** Right.

13 **THE COURT:** Is there anything else you wanted to say?

14 **MR. RINCONES:** Your Honor, I would want the Court to
15 know that on his free time Mr. Perez, you know, participated in
16 the community. He was a --

17 **THE COURT:** I know he did.

18 **MR. RINCONES:** -- part of the Jaycees.

19 **THE COURT:** I -- I've read it.

20 **MR. RINCONES:** He was part of the Civil Air Patrol.

21 **THE COURT:** He served -- he served in the military.

22 **MR. RINCONES:** He served in the military.

23 **THE COURT:** He's done everything you would want
24 somebody to do.

25 **MR. RINCONES:** Part of the Elk Lodge.

1 **THE COURT:** This is the only thing he's done, other
2 than the DWI, that would indicate there is any issue here.

3 **MR. RINCONES:** That is correct.

4 **THE COURT:** And DWI's are serious; don't get me
5 wrong. But there is nothing else here other than, yes, he is
6 an outstanding family man, he's involved in the community,
7 everything.

8 **MR. RINCONES:** Your Honor, by no means do we want the
9 Court to think that we are trying to minimize his
10 responsibility or the seriousness of this offense. He takes
11 this very serious. As you can see, he ended up in the hospital
12 for it already. A look into the defendant's life history
13 clearly shows that he has respect for the law, as the Court
14 just stated. We're respectfully asking the Court to consider
15 granting him a probated sentence as opposed to an
16 incarceration. We believe that at his age, with his
17 background, and with his medical conditions, that would be
18 sufficient and adequate to secure the public from any further
19 crimes from him, and it will certainly deter him from anything
20 further.

21 **THE COURT:** For him. But it's not -- deterrence is
22 not just for him, it's for the public, also. And, so, how do
23 we deter somebody?

24 **MR. RINCONES:** Your Honor, Mr. Perez is not only
25 getting this judicial punishment; he's --

1 **THE COURT:** I mean, there are people who strongly
2 believe that white-collar criminals get big breaks. In fact,
3 that's probably one of the reasons of the Sentencing Reform Act
4 of 1984, which brought the guidelines into effect. There was
5 the view that white-collar criminals tended to get much better
6 breaks than people who were not white-collar criminals. And
7 that's a lot to do with why we have sentencing guidelines and
8 why we have the Sentencing Reform Act of 1984.

9 **MR. RINCONES:** Yes, your Honor.

10 **THE COURT:** That may seem like a long time ago to
11 you --

12 **MR. RINCONES:** (Laughter)

13 **THE COURT:** -- but certainly not to Mr. Perez and
14 myself, as to when 1984 was.

15 **MR. RINCONES:** Your Honor, it's important to --

16 **THE COURT:** You've -- what you failed to concentrate
17 on is, actually, there is a motion here that the Court could
18 take very seriously and I feel very strongly about. And I do
19 tell defendants that when those motions get filed I consider
20 them extremely important; rather than spending all this other
21 time on things that really doesn't get us anyplace. Because
22 I've read it, and I know it, and I know --

23 **MR. RINCONES:** Yes, your Honor.

24 **THE COURT:** -- Mr. Perez has got nothing else in his
25 background other than the DWI, which he addressed, but taking

1 some matters with regards to alcohol in hand and trying to
2 correct that and stuff, and so I -- I don't come out here
3 without having read the reports.

4 **MR. RINCONES:** Yes, your Honor. Well, in addition
5 to --

6 **THE COURT:** In fact, unfortunately, when I'm asked by
7 friends, "What's the latest book you've read," I said, "I
8 really haven't read any books; I've read a lot of presentence
9 reports, and that has to do for my reading time."

10 **MR. RINCONES:** Well, your Honor, we would want you to
11 consider what I've just explained to the Court, those sections
12 I outlined, along with the five -- sealed 5K that the
13 Government filed. I think, if I may go into that --

14 **THE COURT:** Well, I've read that also, and he -- he
15 didn't lie about anything, he was very forthright, he explained
16 the whole situation to them when confronted with it, and --

17 **MR. RINCONES:** Well, I -- I think it goes beyond --

18 **THE COURT:** -- and, frankly, I think he did it
19 because he -- it shows that he didn't really think that this
20 was a big deal. I mean, this is how he -- these people do
21 business, and so he said, yeah, they wanted a fee, and there is
22 a referral fee. There is a lot of that in both of these
23 reports of, "We all know there is a referral fee," or "the
24 fee," or whatever, "that gets charged, and this is what we were
25 doing, and that was that."

1 **MR. RINCONES:** Your Honor, I understand what the
2 Court is telling us, but I -- I think that we want to stress
3 out some of his participation for this 5K.

4 **THE COURT:** Well, frankly, the case for the other two
5 probably would have been very difficult to make, and, yes, I
6 understand that.

7 **MR. RINCONES:** Well, your Honor, it's important for
8 the Court to know that Mr. Perez, you know, attended at least
9 10 debriefing sessions.

10 **MR. SALAZAR:** Your Honor, if I may interrupt, I -- I
11 believe that we're getting into a sealed motion, and if the
12 Government -- if the Court would allow us, I have two agents
13 here that could answer any questions, as well, and perhaps we
14 could take all of this at the bench, your Honor?

15 **THE COURT:** Right. And the reason they're sealed is
16 usually for the protection of the defendant, but, apparently,
17 his lawyer doesn't find that necessary. But I -- I think we
18 probably should discuss it up here.

19 **MR. SALAZAR:** Yes, Judge. And should I bring the
20 agents up to the desk?

21 **THE COURT:** Yes.

22 **MR. RINCONES:** May we approach, your Honor?

23 **THE COURT:** No, I wouldn't have -- yes, of course. I
24 wouldn't have a conversation with them without you up here.

25 //

1 **(Sealed bench conference omitted from 3:32 p.m. until**
2 **3:41 p.m.)**

3 **THE COURT:** Mr. Rincones, did you want to say
4 anything else?

5 **MR. RINCONES:** No, your Honor. I would just ask the
6 Court to consider everything that was discussed here
7 previously, and I would ask the Court to consider sentencing my
8 client to a probated sentence.

9 **THE COURT:** Mr. Perez, did you want to say anything
10 else?

11 **THE DEFENDANT:** No, sir, just that -- that I regret
12 what happened, and again I repeat it was a bad business
13 decision, and I guarantee you, given that opportunity, it will
14 never, ever happen again, especially, like I said, I put my
15 family to shame.

16 **THE COURT:** That's the hard part that happens in
17 these cases, Mr. Perez, and it's not just your case. It's in
18 every single case. A family serves the sentence with the
19 individuals that get sentenced.

20 **THE DEFENDANT:** I found out -- that out all during
21 all this time with the situation my wife's in and -- and the
22 situation I'm in, also, that that's -- it's very hard, and the
23 one that takes it all, really, in reality, is the family.

24 **THE COURT:** No question about it.

25 **THE DEFENDANT:** I had all my family here on Monday.

1 They had to go back because of school, because of the kids;
2 because I have the full support of my family. In the
3 background, the back bench, as you see, the majority is my
4 family, and -- because they're here to support me.

5 **THE COURT:** And, you know, I have to tell you that
6 the fact that some of them aren't here today, we wouldn't be
7 doing our job as judges -- most of the time people are here who
8 don't have their families in this country, but I know that
9 their family is still there, and so it doesn't really make a
10 difference whether they're in the courtroom or not, at least
11 from my standpoint. I realize that the families are the ones
12 that suffer a lot, and so they always get taken into
13 consideration, whether they're in the courtroom or not. In
14 fact, I have to remind myself that most of my defendants in
15 this courtroom can't have their families here because their
16 families would be breaking the law by coming into the United
17 States illegally.

18 Anything else? Does the Government want to say
19 anything else?

20 **MR. CESTARO:** Only, your Honor, that the Government
21 moves for the one-point reduction pursuant to --

22 **THE COURT:** For the --

23 **MR. CESTARO:** -- timeliness of the plea.

24 **THE COURT:** -- extra point for acceptance?

25 **MR. CESTARO:** For the timeliness of plea. Yes, sir.

1 **THE COURT:** All right. Court's ready to proceed.
2 The base offense level based on what the defendant's pled
3 guilty to here is 12. Pursuant to 2C1.1(b)(1) there is a two-
4 level increase based on the number of, quote, "bribes."
5 Pursuant to 2C1.1(b)(2), based on the amount of money involved,
6 there is a plus 14. The paragraph 46 four-level adjustment
7 upward does not apply here, as the Court has already ruled.
8 The adjusted offense level is 28. There is a minus two, as
9 well as the extra minus one. Total offense level is 25. His
10 Criminal History Category is I. The Court will adopt
11 paragraphs 43 to 56 of this presentence investigation report,
12 with the exception of paragraphs 46, 50, and -- and total
13 offense should really have a number on it, but it doesn't, but
14 that paragraph is not adopted either.

15 So, with a 25, Criminal History Category I, his range
16 becomes 57 to 71 months, which is actually 57 to 60 months,
17 because the maximum in this case is 60 months. The Court,
18 granting a motion that has been filed, is going to find that
19 the appropriate sentence in this case is a sentence of three
20 years' probation under the conditions which have been adopted
21 as standard in the Southern District of Texas, to include all
22 statutory requirements. There will be a \$100 special
23 assessment against him as required by law. The reasons I've
24 chosen this sentence is because I have considered all the
25 matters that the Court needs to consider under Title 18,

1 Section 3553(a), as well as all of the documents and motions
2 that have been filed here, and finds that it's the appropriate
3 sentence.

4 Mr. Perez, I want you to understand that if you would
5 like to appeal this sentence you have within 14 days from the
6 entry of judgment in this case within which to do that. The
7 way that you do that, sir, is by filing a written notice of
8 appeal with the Clerk of the Court within that time period. If
9 you're unable to afford the cost of an appeal, within that time
10 period, you will also have to file a motion to proceed in forma
11 pauperis in which you indicate to the Court that you're unable
12 to afford the cost of an appeal, and if the Court were to find
13 that you are unable to afford the cost of an appeal, the Court
14 would appoint an attorney to represent you at no cost to you,
15 as well as bear the cost of the appeal.

16 I will indicate to the probation office that if at
17 the usual time when these are assessed, if there is no need for
18 supervision, they can make the recommendation that it be
19 probation without supervision.

20 Did you understand all that, Mr. Perez?

21 **THE DEFENDANT:** Yes, sir, I did.

22 **THE COURT:** I hope that you don't end up at the
23 hospital today like you did the last time you were here.

24 **(Laughter)**

25 **THE COURT:** I hope that everything will remain good

1 with your health and that you take care of it and that you
2 continue taking care of your family.

3 **THE DEFENDANT:** I thank you very much, your Honor.

4 **THE COURT:** And whenever you get an opportunity, you
5 tell people that you know that are in business that until they
6 stop doing what was done here, thinking that that's the only
7 way you're going to make a sale, the situation on this side of
8 the border with dealing with Mexico will continue the same.

9 **THE DEFENDANT:** Well, your Honor, it's been taken
10 care of, because I -- you know, we have spoke to our clients
11 that -- nothing.

12 **THE COURT:** And I suspect your competitors also know
13 that the Government is on the watch now. And probably that has
14 been fixed, to some extent, also, if not completely done
15 already.

16 **THE DEFENDANT:** Probably so.

17 **THE COURT:** If you all don't have anything else, you
18 all can be excused. Thank you.

19 **MR. RINCONES:** Thank you, your Honor.

20 **THE DEFENDANT:** Thank you, your Honor.

21 **(Proceeding was adjourned at 3:47 p.m.)**

22

23

24

25

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

February 9, 2017

TONI HUDSON, TRANSCRIBER